

Not To Be Published

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

TOLEDO SHIP REPAIR COMPANY,
a Division of Manitowoc Marine Group,
L.L.C.,

Plaintiff,

vs.

NORTH AMERICAN KILN SERVICE,
INC.

Defendant.

No. C03-3007-MWB

**MEMORANDUM OPINION AND
ORDER REGARDING THE
PLAINTIFF’S PARTIAL MOTION
FOR SUMMARY JUDGMENT ON
COUNT I OF THE COMPLAINT**

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I. INTRODUCTION

A. Procedural Background

On January 31, 2003, the plaintiff, Toledo Ship Repair Company, a Division of Manitowoc Marine Group, L.L.C. (“Toledo”) filed a complaint against the defendant, North American Kiln Service, Inc., (“NAK”). (Docket No. 1). In its complaint, Toledo asserts claims for breach of contract and requests a judgment against NAK. Specifically, Toledo states in count one of the complaint that on or about January 2, 2002, NAK entered into an oral agreement or agreements with Toledo to provide certain specified services for NAK at the Holcim Cement Company (“Holcim”) in Mason City, Iowa. Toledo claims that NAK agreed to pay Toledo \$317,392.79 for services performed at the Holcim project. Toledo asserts that it performed all services as contracted for the Holcim project. Toledo alleges that NAK has paid only \$108,328.95¹ of the agreed \$317,392.79 amount and has failed and refused to pay the balance of \$209,063.84.² In count two of the complaint,

¹ Throughout the pleadings there is a discrepancy as to whether \$108,328.95 or \$108,328.96 was paid to Toledo. The bill payment stub submitted to the court, plaintiff’s exhibit number 7, indicates \$108,328.95 was paid to Toledo. The court will use this figure.

² When \$108,328.95 is subtracted from the agreement amount of \$317,392.79 there remains a balance of \$209,063.84. NAK admits it has paid \$108,328.95 to Toledo for its work on the Holcim project. The complaint seeks payment of \$209,063.84 regarding the Holcim Project. Toledo states that it will agree for purposes of its motion for partial summary judgment and will accept as true NAK’s claim that \$17,968.34 should be subtracted from the amount due and owing for services on the Holcim project. When \$17,968.34 is subtracted from \$209,063.84, the amount remaining to be paid on the Holcim project, is \$191,095.50. Again, there is a mathematical discrepancy between court’s amount of \$191,095.50 and the amount used by the parties of \$191,095.49. The
(continued...)

Toledo asserts that on or about February 20, 2002, Toledo and NAK entered into an oral agreement for Toledo to provide certain specified services for NAK at the Riverwood International Corporation Plant near Macon, Georgia (“Riverwood”). Toledo contends that during its performance NAK terminated Toledo’s involvement and prevented Toledo from performing the remainder of its services for the Riverwood project. Toledo alleges that it suffered actual and direct damages and losses of approximately \$105,650.00 for its time and materials, and suffered other losses in connection with the Riverwood project. Toledo has demanded payment from NAK for the Riverwood project and states that NAK has failed and refused to pay the amounts due and owing Toledo. In count three of the complaint, Toledo asserts that in February 2002, Toledo undertook to provide steel work, welding and related services and the use of equipment and materials, which were all of value to NAK, in connection with the Riverwood project. Toledo contends NAK accepted the services and material and has refused to pay fair compensation for the value of the services and equipment. In count three, Toledo requests, in the alternative, that in the event that Toledo is denied recovery under count two that judgment against NAK in *quantum meruit* be allowed for the value of the items provided to NAK for the Riverwood project.

On April 11, 2003, NAK filed its answer, including affirmative defenses and counterclaims. (Docket No. 9). NAK alleges that Toledo has serious equipment problems, personnel efficiency problems and performance problems that slowed down the repair job at the Holcim project. NAK alleges that due to these problems, Holcim retained \$35,936.68 of the original agreed upon bid. NAK contends that it and Toledo divided the

²(...continued)
court will use the parties amount of \$191,095.49.

\$35,936.68 loss and that Toledo agreed to subtract \$17,968.34 from its invoice. NAK asserts that the amount of \$17,968.34 is in dispute because Toledo refuses to pay its share of the \$35,936.68. In addition to Toledo's half of the \$35,936.68, NAK asserts that it also suffered a loss of \$17,968.34 because of the problems that arose from Toledo's performance problems. NAK alleges in its counterclaim under count one that Toledo has failed to fulfill its obligations on the Holcim project and that in failing to fulfill its obligations Toledo breached the contract. NAK asserts that, in addition to the loss of \$17,968.34, it has incurred damages in the form of both actual and consequential as a result of Toledo breaching the agreement in an amount to be determined at trial. In its counterclaim, NAK alleges in count two that Toledo's actions in failing to fulfill its obligations on the Riverwood project constitutes a breach and that NAK has incurred damages, both actual and consequential, of no less than \$104,806.02. NAK, in its counterclaim, further asserts in count three that it is entitled to a setoff from Toledo in an amount equal to all sums that NAK should have received if Toledo had not breached the agreement.

On May 12, 2003, Toledo answered NAK's counterclaims. (Docket No. 13). On June 14, 2004, Toledo filed a motion for partial summary judgment and request for a certification of judgment under Federal Rule of Civil Procedure 54(b). (Docket No. 40). Toledo contends that it seeks to recover damages for NAK's breach of two separate and distinct contracts. The first contract involves Toledo's services for the Holcim project. The second contract involves Toledo's services for the Riverwood project. Toledo is seeking partial summary judgment for payment of the services it provided for the Holcim project in the amount of \$191,095.49. NAK filed its resistance to Toledo's motion for partial summary judgment on July 28, 2004. (Docket No. 45). In its resistance, NAK agrees that the amount of \$191,095.49 is undisputed but asserts that there are genuine

issues of fact as to whether Toledo performed as agreed and whether NAK suffered damages of no less than \$17,968.34 because of the problems that arose because of Toledo's performance. NAK alleges \$35,936.68 was deducted from the amount Holcim was to pay NAK. Again, NAK reasserts that it seeks both actual and consequential damages, as a result of Toledo's breach of the Holcim agreement, to be determined at trial.

Initially Toledo requested oral argument. Toledo later filed a motion to withdraw its request for oral argument and NAK did not resist. The court granted Toledo's motion. This matter is now fully submitted. The court turns first to a discussion of the undisputed facts as shown by the record, then to the standards applicable to motions for summary judgment, then to the parties arguments and, finally to the legal analysis of whether Toledo is entitled to partial summary judgment on count one.

B. Factual Background

Toledo is a limited liability corporation, organized and existing under the laws of Nevada. Toledo has its principal place of business located in the State of Ohio. Toledo is involved primarily in the repair of marine vessels and ships. In addition, Toledo occasionally enters into contracts to provide certain specified steel work, welding and related services to companies involved in the repair and replacement of large kilns. NAK is a corporation organized and existing under the laws of Pennsylvania, with its principal place of business located in the State of Georgia. NAK is in the business of repairing large, industrial kilns used in curing cement. In January 2002, NAK entered into an oral agreement with Holcim to perform certain construction related services for Holcim in or near Mason City, Iowa. In January 2002, NAK also entered into an oral agreement with Toledo. The parties agree that Toledo and NAK entered into an oral agreement such that Toledo would provide certain specified steel work, welding, and related services, to assist

NAK with the repairs on kilns for the Holcim project. Toledo agreed to perform these services and NAK agreed to pay Toledo \$317,392.79.³ NAK has received payment for its services from Holcim in the amount of \$332,605.78. In a letter from NAK to Holcim, problems involving the Holcim project were discussed and a proposed resolution regarding the Holcim project was proposed:

Recently, we had a discussion with [Toledo] in which they conceded they were responsible for some problems on the job, and offered to reduce their invoice for #2 Kiln work to us by 5%. NAK will match their reduction. This will effectively cut the net profit on this job by over half.

Plaintiff's Exhibit No. 6, App. 32. In this letter, the proposed revised invoice indicates that a 5% reduction equals \$17,296.83.⁴ Holcim retained \$35,936.68 due to problems that arose during the performance of the contract. NAK and Toledo then exchanged a volley of communications attempting to resolve who would pay for the \$35,936.68 that was deducted from what Holcim was to pay NAK for the Holcim project. Toledo submitted an affidavit to the court from Peter J. Kerwin.⁵ Mr. Kerwin states in his affidavit:

It is my understanding that NAK claims the parties agreed to subtract \$17,968.34 from amounts owing to Toledo on the Holcim Project due to certain problems that arose. Toledo

³ The original invoice amount was \$366,761.71. Toledo states that the parties agreed to adjust this figure to \$317,392.79 due to certain credits, which are reflected in handwriting on the invoice submitted as part of the motion for partial summary judgment. Plaintiff's Exhibit No. 1, App. 8.

⁴ The court notes that this amount is less than the \$17,968.34 used by the parties in their pleadings.

⁵ Mr. Kerwin was employed, between April 2002 and August 2002, as the Interim General Manager of Toledo Ship Repair Company and at the time of his affidavit was the Marine Group Controller.

disputes this allegation. However, even accepting NAK's claim that \$17,968.34 was rightfully subtracted from amounts owing, there is still an undisputed balance due and owing to Toledo for its services on the Holcim Project of \$191,095.49.

Affidavit of Peter J. Kerwin, App. 45. NAK subtracted \$17,968.34 from Toledo's invoice. In its answer and counterclaim, NAK asserts that in addition to the disputed \$17,968.34, that it has suffered a loss of \$17,968.34 regarding the Holcim project. Toledo has submitted to NAK a request for payment of \$209,063.84 regarding the Holcim project and in its complaint seeks payment of this amount. Toledo states that it will agree for purposes of its motion for partial summary judgment and will accept as true NAK's claim that \$17,968.34 should be subtracted from the amount due and owing for services on the Holcim project. NAK admits it has paid \$108,328.95 to Toledo for its work on the Holcim project and that there is a remaining undisputed balance due of \$191,095.49. NAK admits in its "Defendant's Response Statement of Material Fact," (Docket No. 45) that Toledo's performance on the Holcim project warrants a payment of the remaining balance in the amount of \$191,095.49:

12. Answering Paragraph 12, NAK denies that Plaintiff "fully" performed "all" services on the Holcim Project because the client enforced a performance penalty which NAK and Defendant⁶ split. Except as qualified, NAK admits Paragraph 12.

15. Answering Paragraph 15, NAK states that the parties agreed to split the performance penalty enforced by the client on the Holcim Project, with Defendant's share of the split

⁶ Considering the context in which "Defendant" is used in this paragraph, the court believes this to be a typographical error by NAK and that NAK meant to say, "NAK and [Plaintiff/Toledo] split" the performance penalty. The court doubts that NAK intended to say "which NAK and [NAK] split."

being \$17,968.34. Except as qualified, NAK denies the remainder of Paragraph 15.

. . .

17. Answering Paragraph 17, NAK denies that Plaintiff properly performed services on the Holcim Project. NAK admits that Defendant's⁷ performance, such as it was, was sufficient to warrant payment of \$191,095.49.⁸ Except as qualified, NAK denies the remainder of Paragraph 15.

. . .

19. Answering Paragraph 19, NAK denies that Plaintiff properly performed services on the Holcim Project. NAK

⁷ Considering the context in which "Defendant" is used in this paragraph. The court believes this to be a typographical error mirroring the error cited in footnote 5. The court assumes that NAK meant to say, "NAK admits that [Plaintiff's/Toledo's] performance, such as it was, was sufficient to warrant payment of \$191,095.49." The court doubts that NAK intended to say "NAK admits that [NAK's] performance, such as it was, was sufficient to warrant payment of \$191,095.49."

⁸ Both parties are in agreement, for purposes of this motion for partial summary judgment that Toledo is entitled to payment of \$191,095.49. Paragraph 17 of Toledo's material facts, stated:

NAK does not dispute that Toledo properly performed the services on the Holcim Project which entitle it to payment of this \$191,095.49 balance. In fact, NAK admitted that [Toledo's] "work quality was never questioned." (App. at 32; App. at 53:3-13; App. at 54:23-55:4).

Plaintiff's Statement of Material Facts in Support of Motion for Summary Judgment, Docket No. 40, part 3.

admits that Defendant's⁹ performance, such as it was, was sufficient to warrant payment of \$191,095.49. Except as qualified, NAK denies the remainder of Paragraph 19.

Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment, Docket No. 45, part 3.

In February 2002, NAK and Toledo entered into another oral agreement regarding the Riverwood project. In this agreement Toledo agreed to perform certain services for the Riverwood project near Macon, Georgia, and NAK agreed to pay for those services. In a four page letter from NAK to Toledo, allegations as to a breach of contract regarding the Riverwood project are outlined. In relevant part, the letter states:

NAK will not pay [Toledo] for the Riverwood Job due to the aforementioned breach of contract. In addition, NAK will deduct our additional costs on this job from your Holcim invoice. These costs will include transportation of the injured employee from the site to Ohio and additional equipment, supplies and manpower costs. A breakdown of these costs will accompany the forthcoming check for the Holcim job.

Plaintiff's Motion for Partial Summary Judgment, Docket No. 40, Exhibit A, p. 3. The parties have been unable to resolve the disputes regarding either the Holcim project or the Riverwood project.

II. LEGAL ANALYSIS

A. Standards For Summary Judgment

The disposition of a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure ordinarily depends upon whether or not there are genuine

⁹ Again, the court believes this to be a typographical error and that NAK intended to refer to Plaintiff's/Toledo's performance.

issues of material fact for trial. *Quick v. Donaldson Co.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996) (on a motion for summary judgment, the trial judge's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial); *Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir. 1990). Rule 56 provides that either the claimant or the defending party may move for summary judgment in its favor on all or any part of a claim. See FED. R. CIV. P. 56(a) & (b). "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). In reviewing the record, the court must view all of the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Quick*, 90 F.3d at 1377 (same). Procedurally, the moving party bears "the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which show lack of a genuine issue." *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)); see also *Rose-Maston v. NME Hosps., Inc.*, 133 F.3d 1104, 1107 (8th Cir. 1998); *Reed v. Woodruff County, Ark.*, 7 F.3d 808, 810 (8th Cir. 1993). When the moving party has carried its burden under Rule 56(c), the party opposing summary judgment is required under Rule 56(e) to go beyond the pleadings, and by affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); *Celotex*, 477 U.S. at 324; *Rabushka ex. rel. United States v. Crane Co.*, 122 F.3d 559, 562 (8th Cir. 1997), *cert. denied*, 523 U.S. 1040 (1998); *McLaughlin v. Esselte Pendaflex Corp.*, 50 F.3d 507, 511 (8th Cir. 1995); *Beyerbach v.*

Sears, 49 F.3d 1324, 1325 (8th Cir. 1995). An issue of material fact is “genuine” if it has a real basis in the record. *Hartnagel*, 953 F.2d at 394 (citing *Matsushita Elec. Indus. Co.*, 475 U.S. at 586-87). As to whether a factual dispute is “material,” the Supreme Court has explained, “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Hartnagel*, 953 F.2d at 394. If a party fails to make a sufficient showing of an essential element of a claim with respect to which that party has the burden of proof, then the opposing party is “entitled to judgment as a matter of law.” *Celotex Corp.*, 477 U.S. at 323; *In re Temporomandibular Joint (TMJ) Implants Prod. Liab. Litig.*, 113 F.3d 1484, 1492 (8th Cir. 1997). The court will apply these standards to Toledo’s motion for partial summary judgment and request for Rule 54(b) certification.

B. Arguments Of The Parties

Toledo seeks partial summary judgment and Rule 54(b) certification for count one of the complaint, the amount it claims is due and owing as to the Holcim project, plus interest. Toledo asserts in its motion for partial summary judgment that NAK has made an admission regarding the amount it owes Toledo for the Holcim project and therefore it is undisputed and there is no issue of genuine material fact that NAK owes Toledo \$191,095.49, plus contractual interest of two percent per month since March 12, 2002 for its performance on the Holcim project. Toledo contends that NAK’s sole reason for withholding payment of the undisputed balance for the Holcim project is that NAK seeks to use this money as a setoff for Toledo’s alleged breach of contract on the Riverwood project. NAK has filed a counterclaim and contends that there are genuine issues of material fact regarding the Holcim project. Specifically, NAK asserts that, due to

problems with the Holcim project, Toledo and NAK agreed that \$35,936.68 would be deducted from Holcim's bill as a performance penalty. NAK asserts that this cut its profit on the Holcim project in half. NAK asserts that Toledo breached the agreement and argues that it has damages of no less than \$17,968.34 because Toledo failed to fulfill its obligations on the Holcim project. NAK also points out that the amount sought by Toledo in its complaint does not deduct the \$17,968.34 from the amount Toledo claims is due and owing from NAK. NAK denies that Toledo performed as contracted on the Holcim project. NAK does admit in its answer that Toledo's performance, such as it was, was sufficient to warrant payment of \$191,095.49. Defendant's Response Statement of Material Fact, Docket No. 47, part 3 at 2. However, NAK also asserts that the court will be unable to completely dispose of count one because the amount of damages claimed by NAK, as to the Holcim project, will remain in dispute. NAK also claims that it has a right to hold payment of the Holcim project balance as a setoff for NAK's claimed breach of contract by Toledo on the Riverwood project.

In response to NAK's resistance to the motion for partial summary judgment, Toledo contends that it did not agree to divide the \$35,946.66 but will conditionally agree that it did if partial summary judgment is granted by the court. Specifically, Toledo states that it is willing to stipulate that, if the court grants its motion for partial summary judgment on the undisputed balance of \$191,095.49 and enters a Rule 54(b) certification on that judgment, Toledo will dismiss with prejudice its remaining balance of \$17,968.34 owed on the Holcim project.¹⁰ Therefore, Toledo argues because there is no longer an

¹⁰ Toledo added in its reply brief in support of its motion for partial summary judgment a footnote:

(continued...)

issue of material fact as to the \$17,968.34, for purposes of its motion for partial summary judgment, and NAK does not dispute the remaining balance of \$191,095.49, regarding the Holcim project, the court can and should award partial summary judgment as to count one, plus interest. Toledo also argues that the sole reason that NAK is refusing to pay the \$191,095.49, which NAK has admitted “warrants payment,” is that NAK is retaining the balance as a setoff for Toledo’s alleged breach of contract on the Riverwood project which was a separate and distinct contract. Toledo contends that NAK cannot retain the Holcim balance to setoff the alleged breach of contract on the Riverwood project. Toledo argues that there would be nothing left to be resolved on the Holcim project if Toledo dismisses with prejudice its claim to the \$17,968.34, leaving Toledo’s count two and NAK’s counterclaim as to the Riverwood project, as a separate and distinct matter for resolution at trial.

C. Toledo’s Motion For Partial Summary Judgment

In its motion for partial summary judgment, Toledo argues that, as to count one, there is an undisputed balance due to Toledo of \$191,095.49 for its services on the Holcim

¹⁰(...continued)

Toledo is willing to give up its right to the additional \$17,968.34 owed on the Holcim Project if doing so will allow it to obtain a Rule 54(b) final judgment on monies that NAK has wrongfully withheld for over two years. Toledo wishes to make clear, however, that if the Court denies its request for a Rule 54(b) certification, it will continue to seek recovery on the disputed \$17,968.34 on the Holcim Project.

(Docket No. 49 at 2, fn. 1).

project. Further, Toledo states that it will conditionally agree, for purposes of its motion for partial summary judgment, that the parties would split the performance penalty. However, Toledo will only agree that the \$17,968.34 is undisputed if the court grants it Rule 54(b) certification on count one. Toledo's claims it performed all of its duties and responsibilities pursuant to its agreement with NAK on the Holcim project and that NAK's refusal to pay the remaining balance constitutes a breach of this agreement.

NAK addressed the disputed \$17,968.34 in its answer:

5.

Due to the problems with [Toledo], Holcim retained \$35,936.68 of the original agreed upon bid.

6.

NAK and [Toledo] divided the loss and \$17,963.34 was subtracted from [Toledo's] invoice, while NAK also suffered a loss of \$17,968.34.

(Docket No. 9 at 7). NAK asserts that genuine issues of material fact as to count one preclude summary judgment:

At pages 2-5 of the Motion, Plaintiff sites multiple cases for the proposition that setoff under the counterclaim involving the disputed Riverwood Project should not prevent the granting of partial summary judgment as to the "undisputed" Holcim Project. Nevertheless, the premise relied upon by Plaintiff is that there is no dispute as to the amount owed to it on the claim related to the Holcim Project, other than possible setoff. See, e.g., *Electro-Catheter v. Surgical Specialities Instruments Co., Inc.*, 587 F. Supp. 1446, 1456 (D.N.J. 1984) ("Accordingly, no genuine issue of material fact regarding plaintiff's right to recover on these invoices is present.") In this case, by contrast, there is an admitted fact issue.

Plaintiff admits that there remains a dispute as to the amount owed under Count I of the Complaint. (SMF ¶ 15.) Further, NAK has asserted a counterclaim based on the breach

of the Holcim Project contract for the same amount Plaintiff admits remains in dispute - - \$17,968.34. Under these circumstances, Plaintiff's own Motion materials disclose that there remains a dispute of material fact as to the amount owed to Plaintiff under Count I of the Complaint, and partial summary judgment as to that Count should be denied.

(Docket No. 45 at 3-4). NAK has admitted that payment of \$191,095.49 is "warranted" as to the Holcim project. But, this court finds that genuine issues of material fact remain as to count one. There is a genuine issue as to whether Toledo breached the Holcim agreement because of serious equipment problems, personnel efficiency problems and performance problems that slowed down the job. Further, the court considers NAK's assertion that alleged problems caused the agreement between NAK and Holcim to be modified and \$35,935.68 to be subtracted from Holcim's bill and NAK's claimed profit loss. NAK claim of damages, as to the Holcim project, includes \$17,968.34 and both actual and consequential damages in an amount to be determined at trial. In any event, even if this court were to grant Toledo's motion for partial summary judgment, the amount sought by NAK would remain pending as to count one. Upon reviewing correspondences exchanged between the parties, the affidavits, the portions of the record cited by the parties in support of their positions and considering the parties' written arguments, the court finds that there are genuine issues of material fact as to count one. Clearly, granting Toledo's motion for partial summary judgment will not dispose of count one. Toledo is not entitled to partial summary judgment on count one.

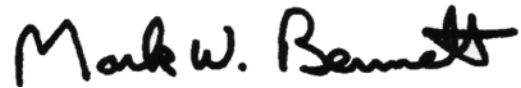
III. CONCLUSION

The court must view all the facts in the light most favorable to the nonmoving party, NAK, and give NAK the benefit of all reasonable inferences that can be drawn from the

facts, *see Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), the court concludes that NAK has come forward with sufficient evidence to generate genuine issues of material fact on the breach of contract claim at issue in count one. Thus, plaintiff Toledo's motion for partial summary judgment as to count one is denied.

IT IS SO ORDERED.

DATED this 18th day of March, 2005.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive, slightly stylized font. The first name "Mark" is written with a capital 'M' and a lowercase 'a', followed by a space, then "W." with a capital 'W' and a period, followed by another space, and finally "Bennett" with a capital 'B' and a lowercase 't'.

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA